IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1600 OF 2005

Jaykumar Tukaram Kachare & Anr ...Petitioners

Versus

Suhas Ramchandra Shete & Ors. ...Respondents

.....

Mr. Rahul S. Kate, counsel for Petitioners

.....

CORAM: B. H. MARLAPALLE, J.

DATED: 31ST MARCH, 2005

P. C.:-

1. Heard Mr. Kate, the learned counsel for the petitioners.

2. The petitioners have filed R.C.S. No. 31 of 1989 for partition and possession. While the suit was pending for more than 15 years, an application at Exh.94 came to be filed under Order VI Rule 17 of C.P.C. for amendment of the plaint. By the said proposed amendment para 2A was sought to be added thereby stating that the plaintiff No.1 was born on 21.7.1961 and the transactions of the suit property were held in 1966, 1977 and 1978. All these transactions were concluded when the defendant No.1 was minor and he reached the majority on 20.7.1979. Therefore, the suit was in time. This information

was expected to be within the knowledge of the plaintiff even when the suit was moved in the year 1989, they are from the same village and the trial court rightly observed that such belated amendment cannot be allowed. Even in the plaint presented to the trial court in 1989 itself, the age of the plaintiff No.1 was shown to be 40 years that means as per the knowledge of the plaintiff he was born some time in the year 1949, this was sought to be changed to 1961. The trial court has rightly rejected the amendment application. No interference is called for in the said order.

3. Hence, the writ petition is rejected summarily.